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"The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics." —*Dr. Wendell Holmes.*

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Res Ipsa Loquitur in Collision Cases.

The rule of *res ipsa loquitur* is stated in *Scott v. London and St. Katherine Docks*, 3 H. & C. 596, by Erle, C.J., at p. 601 as follows: "Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care." It may be said, in general, that cases of collision on the road are not particularly well suited for the application of the maxim, since there is nothing more usual than for accidents to happen in driving without any want of care or skill on the part of the driver, so that a *prima facie* presumption of negligence is not easily raised: *Roberts & Gibb on Collisions on Land*, 2nd Edn. 14. In *Wing v. London General Omnibus Co.*, (1909) 2 K.B. 652, at pp. 663, 664, Fletcher Moulton, L.J., said:

> "In my opinion the mere occurrence of such an accident is not in itself evidence of negligence. Without attempting to lay down any exhaustive classification of the cases in which the principle of *res ipsa loquitur* applies it may generally be said that the principle only applies when the direct cause of the accident, and so much of the surrounding circumstances as was essential to its occurrence, were within the sole control and management of the defendants, or their servants, so that it is not unfair to attribute to them a *prima facie* responsibility for what happened. An accident in the case of traffic on a highway is in marked contrast to such a condition of things. Every vehicle has to adapt its own behaviour to the behaviour of other persons using the road, and over their actions those in charge of the vehicle have no control. Hence the fact that an accident has happened either to or through a particular vehicle is by itself no evidence that the fault, if any, which led to it was committed by those in charge of that vehicle. Exceptional cases may occur in which the peculiar nature of the accident may throw light upon the question on whom the responsibility lies, but there is nothing of the kind here."

This statement of the law has, we believe, hitherto generally been accepted without criticism; but recently reported cases show that, even if the law has not been too widely stated by the learned Lord Justice, the application of the principle laid down by him requires limitation. And so, it seems, do the observations of Sim, J., delivering the leading judgment of our Court of Appeal, in *Thompson v. Leathart*, 4 N.Z.L.J. 187, to the effect that it is clear that the maxim *res ipsa loquitur* does not apply to an accident on a highway.

There are undoubtedly cases of accidents on the highway to which the maxim *res ipsa loquitur* does apply in its full force. For instance, the class of case, not of infrequent occurrence, where damage is suffered through the vehicle leaving the carriage-way and mounting the footpath, will generally allow of its application. In *Bradley v. Bell Bus Co.*, (1928) N.Z.L.R. 204, the defendant's motor-bus suddenly ran off the roadway and collided with a large post at the side of the road, injuring the plaintiff, a passenger in the vehicle. There was, however, evidence from which MacGregor, J., was able to find that negligence on the part of the defendant's driver was proved and it was thus unnecessary for the learned Judge to consider the question of *res ipsa loquitur*. The maxim was, however, applied by the Court of Appeal in England in *McGowan v. Stott*, decided in 1923, but only recently reported, (1930) 99 L.J.K.B. 357. The plaintiff was walking along a six-feet footpath, raised from the roadway and kerbed and channelled in the ordinary way. A motor-vehicle driven by a servant of the defendant mounted the footpath, struck the plaintiff in the back and caused the injuries complained of. As the front and not the back of the vehicle struck the plaintiff it was not a case of skidding, and the damage done by the vehicle showed that it was going at a very considerable speed. At the close of the plaintiff's case Branson, J., non-suited the plaintiff, but the Court of Appeal (Bankes, Scrutton and Atkin, L.JJ.) unanimously ordered a new trial. Scrutton, L.J., unhesitatingly expressed the view that the above-quoted observations of Fletcher Moulton, L.J., in *Wing v. London General Omnibus Co.* went considerably beyond anything said in *Scott v. London and St. Katherine Docks*, and the other two members of the Court inclined to the same opinion. All were agreed that the maxim applied to the case.

Another very recent case in which the maxim has been applied is *Ellor v. Selfridge and Co. Ltd.*, 46 T.L.R. 236. The plaintiffs were standing on a pavement with their backs to the traffic when the defendant's motor-van came behind them, mounted the pavement—finishing with all four wheels on the pavement—and knocked them both down. The defendants called no evidence and the County Court Judge gave judgment for the plaintiffs. On appeal to the Divisional Court it was contended that the plaintiffs had not discharged the onus of proof lying upon them, but Scrutton and Romer, L.JJ., had no hesitation in dismissing the appeal, holding that the maxim *res ipsa loquitur* applied.

That the cases of collisions on highways in which the maxim is applicable are not limited to the class of case where a vehicle mounts the footpath is shown by another recent English decision: *Halliwell v. Venables*, (1930) 99 L.J.K.B. 353. The plaintiff, whose husband had been killed in a motor accident, brought an action for damages against the driver of the motor car in which her husband was riding when he was killed. The plaintiff's evidence showed that the defendant was driving a fast, small sports motor car. It was a dark night and a dry night. The road was broad and there was no other traffic on it at the time of the accident. There was a slight bend in the road. The driver stated that his speed was 35 m.p.h. and that he was driving with one hand only on the wheel as was his usual practice. The motor car was found to have turned over and to have apparently bounded along the road, and might possibly have turned over twice. A good deal of damage was done to the offside of the car, the passenger had been thrown out on the offside, and the car was found some way off the road on the left-hand side. Swift, J., gave judgment for the defendant at the close of the plaintiff's case, but the Court of Appeal (Scrutton, Lawrence, and Slesser, L.JJ.) ordered a new trial: the maxim *res ipsa loquitur* applied, and the facts called for an explanation by the defendant.

Supreme Court

Myers, C.J.
Reed, J.
Blair, J.

September 15, 1930.
Wellington.

SLIPPER v. BRAISBY.

Practice—Leave to Appeal to Privy Council—*Semble* No Jurisdiction in Supreme Court to Grant Leave to Appeal to Privy Council from Decision of Supreme Court on Appeal from High Court of Western Samoa—Question Whether Qualified Privilege Attached to Occasion of Publication of Libel Not One of Great General or Public Importance—Samoa Act, 1921, Ss. 95, 96—Privy Council Rules, Rules 2, 6.

Motion for leave to appeal to the Privy Council from the decision of the Supreme Court (reported *ante* p. 280) on an appeal from the High Court of Samoa.

Von Haast and **Fitzherbert** for appellant.
Solicitor-General (Fair, K.C.) for respondent.

MYERS, C.J. (orally) said that it was unnecessary to determine definitely in the present case the point that was expressly left open in **Tagaloa v. Inspector of Police,** (1928) G.L.R. 58, namely, the question whether the Supreme Court had power to grant leave to appeal to the Privy Council in a case of the present kind. But His Honour might say that, speaking for himself, he did not think that that power did exist. S. 96 of the Samoa Act, 1921, said that there should be no appeal to the Court of Appeal from any decision of the Supreme Court of New Zealand on an appeal from the High Court. Then S. 95 provided: "The determination of the Supreme Court on an appeal from the High Court shall be transmitted to the Registrar of the High Court by the Registrar of the Supreme Court under the seal of that Court and judgment shall thereupon be entered in the High Court in conformity with that determination. . . ." It did seem to His Honour, though it was unnecessary to express a concluded opinion in the present case, that those provisions precluded any grant of leave to appeal by the Supreme Court to His Majesty in Council. Of course, the appellant was entitled, if he thought fit, to apply to the Privy Council for special leave to appeal.

Assuming, however, that the Supreme Court of New Zealand had the power, His Honour thought that in the present case, just as in **Tagaloa's case,** leave should not be granted. Even if leave were granted it would be of no value to the appellant, because, so far as His Honour could see, there was no good reason for saying—and indeed that was admitted by Mr. Von Haast—that the Supreme Court had the power to stay execution. Rule 6 (which provided for stay of execution in certain cases) of the Rules providing for appeals to the Privy Council did not seem to be sufficient to meet such a case as the present: **Stout and Sim,** 6th Edn., 526. It would, therefore, be a futile proceeding to grant leave to appeal, assuming that the Court had the power. Furthermore, the power, assuming it to exist, was derived only from paragraph (c) of Rule 2: **Stout and Sim,** 6th Edn., 523. His Honour did not think that the present case fell within that rule. The real question in the case turned upon the point as to whether the occasion on which the appellant published the defamatory libel was a privileged occasion or rather an occasion of qualified privilege. The Supreme Court in its judgment was unanimous on that point. The question was whether that matter was one of great general or public importance such as would justify this Court in granting leave to appeal. In His Honour's opinion it was not; and leave to appeal to His Majesty in Council should be refused.

REED, J., concurred.

BLAIR, J., said that in his opinion S. 96 of the Samoa Act, 1921, and also S. 95, made it plain that the decision of the Supreme Court was final and that there was no right of appeal. That seemed to His Honour to conclude the case. His Honour agreed also, for the reasons given by the Chief Justice, that the case was not one in which leave should be granted on account of want of public interest.

Motion dismissed.

Solicitors for appellant: **Slipper and Wills,** Wanganui.
Solicitors for respondent: **Crown Law Office,** Wellington.

Myers, C.J.

August 20, 21, 1930.
Wellington.

KINGSFORD v. KINGSFORD AND HARLEN.

Divorce—Adultery—Cross-Examination—Petition for Divorce on Ground of Adultery—Respondent Denying Adultery in Answer and Pleading Condonation Connivance and Conduct Conducing to Adultery—Respondent Giving Evidence in Support of Pleas But Not in Disproof of Adultery—Respondent Not in Cross-Examination Liable to be Asked Questions Tending to Prove Adultery—Evidence Act, 1908, S. 7.

Questions as to limits of cross-examination arising in a petition for divorce based upon alleged adultery. The respondent's answer denied the adultery and alleged, if it were proved that adultery was committed: (a) connivance, (b) condonation, and (c) conduct conducing to the adultery. The co-respondent filed an answer denying the alleged adultery. The respondent had been called as a witness but had refrained from giving any evidence, whether by denial or admission, in respect of the alleged adultery. Counsel for the petitioner sought to cross-examine her in regard to the acts of adultery alleged in the petition. Counsel for the respondent objected.

Leicester for petitioner.
James for respondent.
Cornish for co-respondent.

MYERS, C.J. (orally) read the provisions of S. 7 of the Evidence Act, 1908, and said that Mr. Leicester relied upon **Dennys v. Dennys and Crossman,** (1912) 107 L.T. 591, where, in apparently similar circumstances, Bargrave Deane, J., allowed to be adopted the course that Mr. Leicester sought to adopt in the present case. The question had arisen in two other cases, one before and one after **Dennys v. Dennys and Crossman,** namely **Ruck v. Ruck and Croft,** (1911) P. 90, 104 L.T. 462, and **Craston v. Craston and Seaman,** (1917) 34 T.L.R. 165. Curiously enough, although **Ruck v. Ruck and Croft** was mentioned in a footnote to **Dennys v. Dennys and Crossman,** it did not seem to have been cited; nor did it appear that either of those two cases were cited in **Craston v. Craston and Seaman.** His Honour referred to the facts in those cases and after quoting certain passages from the judgment of Evans, P., in **Ruck v. Ruck and Croft,** (1911) P. at p. 91, and from the judgment of Horridge, J., in **Craston v. Craston** (*cit. sup.*) at p. 165, said that he did not know, nor had he been referred to, any authority in which, as suggested by Bargrave Deane, J., it had been held that the statute did not protect a party making a charge of condonation even though it might involve the question of adultery. With all respect, His Honour was unable to see how the course sought to be adopted by Mr. Leicester could be permitted in the face of the statute. His Honour took the same view of the matter as was taken by Horridge, J., in **Craston v. Craston and Seaman.** Further than that His Honour was not prepared to allow Mr. Leicester's questions to go.

Solicitors for petitioner: **Leicester, Jowett and Rainey,** Wellington.
Solicitor for respondent: **S. C. Childs,** Wellington.
Solicitors for co-respondent: **Webb, Richmond and Swan,** Wellington.

Herdman, J.

July 22; September 18, 1930.
Auckland.

IN RE WHITE.

Will—Construction—"Moneys"—Gift to Widow of Sum in Cash and of Life Interest in "the Balance of My Estate"—Gift on Death of Widow of "All Moneys"—Words "All Moneys" Not Including Realty But Including Fixed Deposit with Bank, Debentures, Government Stock, Shares, and Proceeds of Sale of Butterfat and Wool.

Originating summons for the interpretation of the will of T. H. White, deceased. The will provided (*inter alia*) as follows: "After paying for all my just debts funeral and graveyard expenses I give devise and bequeath to my wife Esther Mary White the sum of £1,000 cash. Also life interest on the balance of my estate. To Kenneth Etherington one silver tankard in my possession to my sister G. Etherington my mother's photo

Mrs. Kelly father's photo. Arthur E. Wilson my gold watch. Upon the death of my wife all moneys I bequeath to Dr. Barnardo's Homes London." When the testator died he was survived by his widow Esther Mary White, the defendant, but he left no children. He had three sisters living at his death, L. Kelly, N. G. Etherington and Q. A. Etherington. The estate of the deceased consisted of the following assets, namely: Cash at the Bank of New Zealand, Ngaruawahia, £45 15s. 1d.; cash on fixed deposit, £411 17s. 7d.; cash in house, £4; furniture and household effects, £56 13s. 6d.; a motor car, £115; live stock and farming implements, £1,259; an instrument by way of security, £50 12s. 0d.; debentures of the New Plymouth Harbour Board, Waitomo Electric Power Board, and the Auckland Hospital Board securing £202 13s. 6d., £203 1s. 2d., and £405 12s. 1d. respectively; New Zealand Inscribed Stock, £303 12s. 4d.; shares in the New Zealand Co-op. Dairy Co. Ltd. (£4 6s. 4d.) and in the Farmers' Co-op. Auctioneering Co. Ltd. (£346 12s. 6d.); the proceeds from the sale of butterfat (£8 14s. 7d.) and from the sale of wool (£158 13s. 11d.); real property valued at £3,550. The liabilities amounted to £763 8s. 5d. The net balance of the testator's estate amounted therefore, to £6,362 16s. 6d. The question arising for the determination of the Court upon the originating summons was as to what property was comprised in the bequest of "all moneys" to Dr. Barnardo's Homes, London.

Feeney for plaintiff.
Hogben for defendant.
Gordon for L. E. Kelly and N. G. Etherington.
Strang for Q. A. Etherington.
Loughnan for Dr. Barnardo's Homes.

HERDMAN, J., said that the will was obviously the work of an amateur, and the difficulty in construing it arose because expressions had been used the true meaning and legal effect of which were unknown to the testator. He gave the widow £1,000 "cash." Then, later, he gave to his widow a life interest in the balance of his "estate" and finally he bequeathed "all moneys" to Dr. Barnardo's Homes upon the death of his wife. The meaning of the words "cash," "estate," and "all moneys" might depend upon the rest of the testator's will. The testator evidently intended that the payment of his debts and funeral expenses should be a first charge on his estate and it was quite plain that after paying debts, funeral expenses and the legacy of £1,000, his widow was to enjoy a life interest in the whole of his estate excepting some minor articles which were bequeathed to named persons. Of cash in the strict sense of the term the testator left £461 12s. 8d. His debts amounted to £130 13s. 4d. and death duties and testamentary expenses amounted to £188. There was, therefore, not sufficient cash left to pay debts, testamentary expenses and the cash legacy of £1,000. In the course of his judgment His Honour discussed at length **In re Taylor,** (1923) 1 Ch. 99; **In re Gates,** (1929) 2 Ch. 420; **In re Putner,** 45 T.L.R. 325; **In re Mellor,** (1929) 1 Ch. 446; **In re Emerson,** (1929) 1 Ch. 128; **Dowson v. Gaskoin,** 2 Keen 14; **Prichard v. Prichard,** L.R. 11 Eq. 232; **Byrom v. Brandreth,** L.R. 16 Eq. 475; **Lowe v. Thomas,** 5 De G.M. & G. 315; **Horton v. Public Trustee,** (1929) N.Z.L.R. 325. His Honour knew of one case only in which the expression "money" had been held to include real estate and in New Zealand no reason existed so far as His Honour was aware why, if, having regard to the context, the Court widened the meaning of the term "money" so as to embrace something more than cash, it should not go the length of deciding that land passed when such an expression was used. But before such a construction was placed upon the word "money" the context would have to make it perfectly clear that a disposition in which the word was used covered realty. What always weighed against such a construction in England was the veneration which the Courts paid to the exclusive right of inheritance which belonged to the eldest son. If a context existed the Court would seize upon it willingly. The testator had created a life interest in his "estate" and then he followed that up with a bequest of "all moneys." It was not a gift of residue; on the contrary it seemed to His Honour to be, in the absence of any illuminating context, a bequest of a specific part of testator's estate. He made a distinction between his "estate" and "all moneys." In the present case His Honour did not think that he would be justified in deciding that the testator when he bequeathed "all moneys" intended to give the "residue that was left." The words "all moneys" did not import something that was left after certain deductions had been made from a total. It was more in the nature of a reference by the testator to a particular part of his estate which until her death had been enjoyed by his widow. His Honour was satisfied that there were in the present will explanatory words which prevented real estate passing under a gift of "all moneys," that gift following as it did a devise to the widow of a life interest "in the balance of my estate." When in one breath a testator spoke of "the balance of my estate" and in the next breath referred to "all moneys" he could not on both occasions have been referring to the same thing. At any rate, His Honour did not feel justified in deciding that the testator intended to do so. As to the remainder of the testator's property, his personal estate, it was not possible, in His Honour's opinion, to maintain that the words "all moneys" included the whole undisposed of personal estate of the deceased. If in the present case the surrounding circumstances were looked at, it would be seen first of all that, if His Honour interpreted the phrase "all moneys" strictly, an intestacy as to a large part of the testator's estate would result; and, secondly, a restricted interpretation would result in Dr. Barnardo's Homes receiving nothing, because the debts, death duties and the pecuniary legacy would more than exhaust all the available money. That result the testator could not have contemplated or intended. To construe the will in such a way would result in absurdity, for there would be nothing to take. His Honour thought, therefore, that having regard to surrounding circumstances the words "all moneys" should be held to include securities or investments.

His Honour accordingly held that the bequest to Dr. Barnardo's Homes of "all moneys" did not include the whole of the estate of the deceased, but included the cash at the bank, money on fixed deposit, the cash in the house, the instrument by way of security, the New Plymouth Harbour Board, Waitomo Power Board, and Auckland Hospital Board debentures, the N.Z. inscribed stock, the shares in a dairy company, and the Farmers' Co-op. Co., and the proceeds of the sale of butterfat and of the sale of wool. As to the remaining part of the estate of the deceased, excepting the specific legacies, there was, subject to the widow's life interest, an intestacy.

Solicitors for plaintiff: **P. Feeney,** Ngaruawahia.
Solicitor for plaintiff: **J. Hogben,** Auckland.
Solicitors for Dr. Barnardo's Homes: **Izard and Loughnan,** Christchurch.
Solicitors for sisters of deceased: **Fullerton Smith and Co.,** Taumarunui.
Solicitors for Q. A. Etherington: **Strang and Taylor,** Hamilton.

Ostler, J. August 28; September 15, 1930. New Plymouth.

LIST v COMMISSIONER OF STAMP DUTIES.

Revenue—Death Duties—Estate Duty—'Final Balance of the Estate'—Debts Deductible—Gift Duty Payable in Respect of Gifts Made by Deceased More Than Three Years Before His Death But Not Assessed or Paid Until After Death Deductible in Computing Final Balance of Estate—Death Duties Act, 1921, Ss. 9, 11.

Case stated under S. 62 of the Death Duties Act, 1921, for the opinion of the Court. One Robert Bremner died on 2nd October, 1929. During his lifetime the deceased had made eight gifts to his two sons over a period from September, 1921, to April, 1925, amounting in all to £15,972 17s. 6d. The gift duty payable by the deceased under the Death Duties Act, 1921, in respect of those gifts amounted to £1,361 6s. 3d. The deceased did not, however, when he made those gifts, deliver to the Commissioner of Stamp Duties the statements required by S. 53 of the Act, and down to the date of his death no gift duty had been either assessed or paid. Gift duty is by S. 50 of the Death Duties Act, 1921, made a debt due and payable by the donor to the Crown. On the date of the deceased's death, therefore, there was owing by him to the Crown a debt of £1,361 6s. 3d. in respect of gift duty unpaid. The appellants, who were the deceased's executors, claimed that that debt should be deducted in arriving at the final balance of the estate. The respondent declined to do that, and assessed death duties on the estate without making allowance for the amount of that duty. The appellants, being dissatisfied with the assessment, required the respondent to state a case.

North for appellants.
Weston for respondent.

OSTLER, J., said that the ground upon which the respondent declined to allow the deduction of that debt was that he was precluded from making any allowance in respect of it by reason

of the provisions of S. 9 (2) (a) of the Death Duties Act, 1921, and also by the provisions of S. 11. The respondent claimed that the gift duty was not a debt incurred by the deceased for full consideration in money or money's worth, and therefore it was not allowable under subsection (1) of S. 9. Counsel for the Commissioner admitted that it was the practice of the department to allow Crown debts created by statute, such as land or income tax, as a deduction from the final balance of the estate, but it was claimed that for the reason stated it was not bound to do so.

For the reasons which His Honour was about to state the respondent was, in his opinion, bound to allow Crown debts to be deducted. It seemed to His Honour plain that the draftsman of S. 9 (2) had not Crown debts in view, and that the whole of that subsection was drawn so as to exclude from deduction from the final balance of estates certain debts as between subject and subject. The section ought to be read: "No allowance shall be made for debts incurred by the deceased as between subject and subject," etc. Crown debts and all other debts of the deceased would then be deductible from the balance of his estate except the private debts enumerated in the subsection. In His Honour's opinion that was what the legislature intended. The words of clause (a) of the subsection were taken, with slight modification, from S. 7 (1) (a) of the English Finance Act, 1894 (57 & 58 Vict. c. 30). The English subsection had been before the Courts on several occasions, but as far as His Honour could ascertain from a search of the authorities there had never been any claim that it prevented the deduction of debts due to the Crown. All the reported cases dealt with private debts. If that were not so, then if an estate of say £100,000 left to a son was assessed at £20,000 for death duty, and the son died before that duty was paid, the Crown would have the right not only to recover the £20,000 owing for death duty, but to charge a further £20,000 as death duty on the son's estate, thus to a certain extent, as was pointed out by Lord Atkinson in **Attorney-General v. Duke of Richmond,** (1909) A.C. 466 at p. 479, levying a tax twice over on the same property. That could never have been the intention of the Legislature. It must often be the case that a taxpayer died after he had been assessed for land or income tax, but before the tax was paid. The tax so levied was a debt due by the taxpayer at the date of his death. It would be unfair if the Crown could refuse to allow that debt in computing the final balance of the estate. His Honour came, therefore, to the conclusion that S. 9 (2) of the Act of 1921 must be read as applying to debts between subject and subject.

If His Honour was not justified, however, in reading those words into the subsection, nevertheless, in His Honour's opinion, the debt in the present case was deductible from the final balance of the estate because it was a debt incurred by the deceased (1) for full consideration in money's worth; (2) wholly for the use and benefit of the deceased. There could, His Honour thought, be no doubt that the deceased received consideration for the debt. The consideration was the right he received from the Crown to give away his property during his lifetime at a lower rate of duty than would have to be paid as estate duty if the property remained his until his death. In exchange for the debt he acquired that right. Such a right came within the well-known definition of "consideration" in **Currie v. Misa,** L.R. 10 Ex. 153. Further, His Honour thought that the consideration the donor received must be presumed to have been full consideration in money's worth. It was true that as between subject and subject it had been held that marriage was not consideration in money's worth: see **Holmes v. Commissioner of Stamp Duties,** (1927) N.Z.L.R. 753, and the cases there cited; but in the present case the consideration moved not from a subject but from the Crown. The donor was informed (by the Statute) that if he paid to the Crown a duty of ten per cent. he could give away his property.

The only remaining question was whether it was wholly for the use and benefit of the donor. In **Attorney-General v. Duke of Richmond,** (1909) A.C. 466, it was contended that as the motive of the Duke of Richmond in that case was to benefit his heirs by decreasing the estate duty, the encumbrance was not created wholly for his own use and benefit. The majority of the Court rejected that argument, and that decision was binding on the Court.

The respondent further contended that he was precluded from allowing that debt by the provisions of S. 11 of the Act. In His Honour's opinion the section dealt only with the liabilities of the estate which became liabilities by reason of the death of its former owner. It did not purport to deal with the debts of the former owner incurred by him in his lifetime. Those debts were already dealt with by S. 9. Therefore, the words "estate or other duty payable under this Act" could not refer to gift duty which was a debt payable by a donor in his lifetime, not a liability incurred by the estate after the death of its former owner. The words "or other duty" must be construed so as to exclude a debt already incurred for gift duty during the life of the donor. For those reasons, in His Honour's opinion, the respondent was wrong in not allowing the debt for gift duty to be deducted in computing the final balance of the estate.

Solicitor for appellants: **Halliwell, Thomson, Horner and North, Hawera.**

Solicitors for respondent: **Weston and Billing,** New Plymouth.

Ostler, J. August 29; September 18, 1930.
New Plymouth.

TARANAKI COUNTY v. MACK.

Rates—"Occupier"—Licensee of Crown Land—Occupation of Licensee Exclusive Notwithstanding Large Reservations and Notwithstanding Licensee's Covenant to Allow Officers of Defence Department to Use Land for Rifle Range—No Pre-Existing Right in Public to Enter Upon Land—Licensee Liable for Rates—Rating Act, 1925, S. 2.

Appeal on point of law from the decision of the Stipendiary Magistrate at New Plymouth. The respondent was the licensee of some 84 acres known as the Rewa Rewa Rifle Range from His Majesty the King. The license was granted under S. 53 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act, 1921, which provided that "Land reserved under any Act for the purpose of a rifle range may, notwithstanding anything to the contrary in such Act or any other Act, be let by way of lease or license by the Governor-General, in the name and on behalf of His Majesty, for such term, not exceeding ten years, and on such conditions as the Governor-General thinks fit." The license provided that in consideration of the rent thereinafter reserved and the conditions and agreements thereinafter contained or implied His Majesty licensed the respondent, therein called "the Licensee," to occupy the range for grazing and pastoral purposes only from 1st August, 1928, for ten years at the annual rental of £87 5s. 3d. payable monthly in advance. The agreement contained the usual stipulations that the licensee would duly and punctually pay the rent and pay all rates and taxes leviable upon the land; that he would keep the land free and clear from all noxious weeds; that he would not assign sublet or part with possession of any part thereof without the consent in writing of the licensor. It provided (clause 8) that the licensee should use every effort to prevent trespass on the land by any unauthorised person and should forward to the Area Officer at New Plymouth a written report embodying all the information in his knowledge of such trespass or attempted trespass. By clause 6 it was provided that the licensee should at all times during the said term allow all members of the New Zealand Defence Forces and all persons authorised by the Minister or by any officer of the said Force to enter upon the said land and remain thereon for the purpose of holding training camps, or for the purposes of practising on the Rifle Range on the land, or for any other purpose in connection with the said Rifle Range that the Minister might deem necessary. Clause 7 reserved unto His Majesty the King all sand, stone, gravel, or other minerals, the exclusive use of all buildings and erections erected by the Minister on the said land, and all necessary and convenient rights of way and passage with or without vehicles for the Minister and the servants and agents of the Minister and all other persons authorised by the Minister for the purpose of the free and uncontrolled use of the said land as such Rifle Range. By clause 8 it was provided that the licensee should not at any time during the said term plough or break up into cultivation any part or parts of the said land without the express previous consent of the Minister. By clause 9 the licensee agreed to keep all fences on the land in good order and repair. Clause 10 provided that the licensee might be required from time to time to remove his stock from any particular part of the said land to be defined by the Officer or Non-commissioned Officer in charge of the troops using the Range or grounds. By clause 14 the licensee undertook certain specified duties as Caretaker and Range Warden of the Rewa Rewa Rifle Range.

Appellant sued the respondent in the Magistrate's Court for rates which had been assessed on the property amounting to £28 9s. 0d. The case was defended by respondent who claimed that he was not liable for rates because he was not an "occupier" of the land within the meaning of that term as defined in Sec-

tion 2 of the Rating Act, 1925. The learned Magistrate upheld this contention.

Quilliam for appellant.
Croker for respondent.

OSTLER, J., referred to the definition of "occupier" in S. 2 of the Rating Act, 1925; that part of it which was applicable to the present case was the words "as to lands of the Crown, whatever may be the term of the tenancy thereof, means the lessee or licensee thereof." The rifle range was land belonging to the Crown, and the occupier was either the lessee or the licensee thereof, whatever might be the term of the tenancy. In **Mayor, etc., of Christchurch v. Pyne, Gould, Guinness Ltd.,** (1928) N.Z.L.R. 318, Adams, J., in dealing with that part of the definition said: "The word 'license' in the last limb of the clause refers to the tenancies created by license under the Land Acts, Mining Acts, and other statutes dealing with lands of the Crown which confer upon the licensee the right of exclusive occupation." His Honour agreed with that statement of the law, and the only point, therefore, was whether the license conferred upon the licensee the right to exclusive occupation of the land. In His Honour's opinion it did. Reading the whole of the agreement together, the intention of the parties was that the licensee should for ten years, subject to the payment of the rent reserved and the performance of the conditions and stipulations, exclusively occupy the land for the definite but limited purposes prescribed. It was true that large reservations were made out of the grant, and the licensee had covenanted with the licensor to allow officers of the Defence Department and others connected with the Defence Department to enter upon the land and use it for the purpose of a Rifle Range. But those reservations were no larger than those in **Glenwood Lumber Company Limited v. Phillips,** (1904) A.C. 405, where it was held that certain licenses to cut timber issued in Newfoundland gave the right to exclusive occupation. It was unnecessary to determine whether the document was actually a lease or a license, because a licensee who had the exclusive occupation given to him was an "occupier" as well as a lessee. It was true also that by clause 5 of the agreement the licensee was to endeavour to prevent trespass by unauthorised persons, and to report all cases of trespass to the Area Officer. But, in His Honour's opinion, the licensee could himself sue any unauthorised person for trespass, and the agreement would be sufficient evidence of his title. This case was quite distinguishable from **Mayor, etc., of Christchurch v. Pyne, Gould, Guinness, Ltd.,** (1928) N.Z.L.R. 318, and from **Tonks v. Mayor, etc., of Wellington,** 10 G.L.R. 579. In those cases there was a preexisting right in the public to enter on to the land. Here there was no such right. For those reasons His Honour held that the judgment of the learned Magistrate was erroneous.

Solicitors for appellant: **Govett, Quilliam and Hutchen,** New Plymouth.
Solicitors for respondent: **Croker and McCormick,** New Plymouth.

Ostler, J. August 28; September 25, 1930. New Plymouth.

IN RE NGAREWA.

Bankruptcy—Assets—Property Passing to Official Assignee—Native's Interest in West Coast Settlement Lands Purchased by Crown After Bankruptcy of Native But Before Discharge—Purchase Money Paid to Bankrupt Before Discharge Not Protected from Bankruptcy and Passing to Official Assignee—Native Land Act, 1909, Ss. 423, 424—Native Land Amendment Act, 1913, Ss. 109, 125—West Coast Settlement Reserves Act, 1892, Ss. 14, 20, 25—West Coast Settlement Reserves Amendment Act, 1913, Ss. 15, 23—Bankruptcy Act, 1908, S. 61.

Motion under the Bankruptcy Act, 1908, by the Deputy Official Assignee of the estate of Ueroa Ngarewa, a bankrupt Native, for an order declaring that a cheque for £300 held by the bankrupt's solicitor was property of the bankrupt which passed to the Deputy Official Assignee under S. 61 of that Act. The cheque was given to the bankrupt by the Crown in part payment of certain shares in land under The West Coast Settlement Reserves Acts owned by the bankrupt and sold by him to the Crown. Ueroa Ngarewa was adjudicated a bankrupt on 3rd October, 1925. The proved debts amounted to £253 14s. 6d., and there were no assets. The bankrupt was the owner of 37½ shares in the Taumaha Native Reserve, a reserve under the West Coast Settlement Reserves Acts. That reserve had been leased to a European tenant under the provisions of those Acts. On 22nd May, 1930, the Crown acquired the bankrupt's shares in the land in pursuance of the powers granted it by S. 109 of the Native Land Amendment Act, 1913. The Crown paid for the land in two cheques, one for £35 19s. 4d., and the other for £300 which was made payable to the bankrupt's order, and was in the hands of the bankrupt's solicitor, Mr. Roberts of Patea, who appeared at the hearing to submit to the order of the Court. On 30th April, 1930, the bankrupt gave notice of his application for discharge, and the application came before the Court on 31st May, 1930, after the cheque had been paid by the Crown. The motion for discharge was deferred for three months to enable the Deputy Official Assignee to make the present application. The question for determination was whether the money represented by the cheque for £300 passed to the Deputy Official Assignee as assets in his bankruptcy.

Taylor for Deputy Official Assignee.
Moss for bankrupt.

OSTLER, J., said that it was admitted by counsel for the bankrupt that if the land sold had been Native land under the Native Land Act, 1909, and its amendments, the money would have been assets in the bankruptcy. That that admission was properly made was clear from Ss. 423 and 424 of the Act of 1909, and S. 125 of the Amendment Act of 1913. In **Smith v. Whara Whara te Rangi,** (1917) G.L.R. 63, Edwards, J., held that where a Maori Land Board had sold Native land as the agent for a Native the purchase money in the Board's hands could be attached to answer a judgment debt due by that Native, and that the moneys, although in the hands of the Maori Land Board, were not protected against attachment by the provisions of S. 424 (1) (b) of the Act of 1900. It must follow from that decision that they would equally be unprotected by S. 424 (1) (c) from being made assets in the bankruptcy of a Native.

Counsel for the bankrupt contended, however, that West Coast Settlement lands were in a different category, and that the proceeds of the sale of such lands could never be assets in the bankruptcy of a Native owner of an interest therein. He relied on S. 20 of the West Coast Settlement Reserves Act, 1892. At first sight the words of that section seemed wide enough to cover the point contended for, but in order to construe them regard must be had to the object and intention of the Act. The scheme of the Act was that the Reserves should be for ever inalienable by sale. S. 14 provided that the list of the Native owners of any reserve whose shares of the rents had been definitely settled under one of the former Acts, with such additions as should be made thereto, should be the list of Native owners of the Reserves. It went on to make the following provision: "And the persons named in such list shall, subject to the provisions of this Act, be the persons entitled to the rents, income, profits, *and other moneys* arising out of such reserves." S. 25 again used those words in enacting that, "save as provided by this Act, reserves, or the rents, income, or profits thereout, *or other moneys arising therefrom* shall not be capable of being dealt with or disposed of." In those two sections it was clear that the Legislature in referring to "other moneys" arising out of such reserves was not referring to moneys arising out of their sale. A sale of the reserves was not contemplated under any circumstances at the time the Act was passed. Consequently, the words "other moneys" must have been intended to refer to moneys in the nature of rents or income from its use. The words must be construed *ejusdem generis*. They referred to moneys only in the nature of income. Where the very same words were used in S. 20, they must in His Honour's opinion be construed in the same way. The section merely provided that the reserves themselves and all moneys in the nature of income arising from their letting or use should not become assets in bankruptcy. The Legislature did not provide for the case of the capital proceeds of the sale of the reserves, such a contingency not being within the purview of the Act. In 1913, however, the West Coast Settlement Reserves Amendment Act was passed, the effect of which was to abolish the restriction against sale of those reserves. The preamble to that Act showed what its object was. It referred to all reserves which had been leased under the former Acts, but which the lessees had failed to convert into perpetual leases. The Taumaha Native Reserve was apparently in that category. S. 15 provided that the Native Land Court should partition such lands among the Native beneficial owners, and that upon the expiration of the leases the partitions should take effect and the lands so partitioned vest at law in the Native owners "freed

and discharged from all restrictions whatever against alienation." The effect of that provision was considered in **Hokio v. Aotea Maori Land Board,** (1918) N.Z.L.R. 289, where it was held by Chapman, J., that it was not to leave the Native owners free to dispose of such land as though European land. It merely freed the land from the restrictions against alienation imposed by the West Coast Settlement Reserves Acts, but the land still remained Native land subject to all the restrictions against alienation contained in the Native Land Act, 1909, and its amendments. There was no provision made in the Act of 1913 protecting the proceeds of the sale of those reserves from being assets in bankruptcy. The only protection which such proceeds had, therefore, was that given by the Native Land Act, 1909, and its amendments. Those provisions created no protection in the present case, as was admitted by the counsel for the bankrupt. S. 23 of the West Coast Settlement Reserves Act, 1913, showed that the Legislature contemplated that the Crown might purchase any of the lands dealt with by that Act under S. 109 of the Native Land Amendment Act, 1913, and that was done by the Crown in the present case. As there was no statutory provision protecting the proceeds of this sale to the Crown from being assets in the bankruptcy, and as those proceeds were property acquired by the bankrupt before his discharge, they came within the words of S. 61 of the Bankruptcy Act, 1908, as property passing to the Deputy Official Assignee. Counsel for the bankrupt contended that S. 20 of the West Coast Settlement Reserves Act, 1892, must be read into the amending Act of 1913. His Honour agreed that that was so, but that did not allow the Court to give a different meaning to the words of S. 20 from that which was given to them by the Legislature when that section was enacted. While the bankrupt held his shares in the land they could not be made assets in the bankruptcy. The land itself was protected by the terms of S. 20. But that section gave no protection to the proceeds of the sale of the reserve. For those reasons there must be an order declaring that the money represented by the cheque in the hands of Mr. Roberts were assets in the bankruptcy, and the cheque must be paid over to the Deputy Official Assignee.

Solicitor for Deputy Official Assignee: **L. A. Taylor,** Hawera.
Solicitor for bankrupt: **T. E. Roberts,** Patea.

Ostler, J. August 28; September 15, 1930.
New Plymouth.

IN RE SCHICKER.

Bankruptcy—Proof of Debt—Amendment of Proof—Creditor Believing Security to be Valueless Not Disclosing It in Proof of Debt—Leave to Amend Proof on Discovering that Security of Value Refused—Omission Not Due to Inadvertence—Bankruptcy Act, 1908, Ss. 99, 100 (9), 102 (1), (5).

Motion on behalf of the Manaia Building and Investment Co. Ltd. for an order granting leave to it to amend its proof of debt lodged in the bankruptcy of one Schicker. The facts were as follows: The bankrupt was largely indebted to the company which held from him a chattels security over certain live stock, a submortgage of a memorandum of mortgage, and an assignment of the monies then due and to become due to the bankrupt in respect of milk delivered by him to the Kaupokonui Co-operative Dairy Factory Co., Ltd., Schicker became a bankrupt on his own petition on 18th June, 1927. At that date he was indebted to the company for £3,178 3s. 8d., and on 17th June, 1927, the company lodged a proof of debt for that sum. In the proof of debt it disclosed and valued the chattels security and the submortgage, but did not disclose the assignment of the milk monies. In an affidavit filed in support of the motion the secretary of the company swore that the reason why the security was not disclosed was that the company did not consider that the assignment was then of any value, the company not then knowing that the Kaupokonui Dairy Factory Co., Ltd. had any milk monies in hand payable to the bankrupt. It appeared that at the date of the bankruptcy there was standing to the credit of the bankrupt with the Kaupokonui Dairy Factory Co., Ltd. the sum of £116 11s. 4d., for milk supplied in the 1923-24 season. On subsequently ascertaining that this sum was owing to the bankrupt the Manaia Building and Investment Co., Ltd. applied to the Deputy Official Assignee for leave to amend its proof to disclose the assignment as a security. The company had already taken part in the bankruptcy proceedings by attending and voting at meetings of creditors in respect of the balance of its debt after deducting the value of the securities it had disclosed. The Deputy Official Assignee declined to allow the company to amend its proof.

Hutchen in support of motion.
North to oppose.

OSTLER, J., said that the provisions of the Bankruptcy Act, 1908, were not precisely similar to those of the English Act in respect to the matter. There was no provision in the New Zealand Act or Rules similar to Rule 10 of the English Rules. His Honour referred to Ss. 99, 100 (9), 102 (1) and (5) of the New Zealand Act, and said that there was no provision for allowing a creditor who had omitted to disclose a security by inadvertence to amend his proof. If the company had disclosed the assignment as a security and stated that it was worthless it seemed to His Honour that under S. 102 (5), on showing to the satisfaction of the Court that it had made a *bona fide* mistake as to its value, it would have established its right to an amendment; but it did not disclose the security at all. It was plain from the evidence of the secretary that that was not because it did not occur to its mind; it had the security in mind but, deeming it worthless, did not mention it. The question was whether that could be held to be inadvertence. A large number of cases had been decided in England under the English Rule 10, but it was unnecessary to quote them at length because the law seemed to His Honour to be all summed up in **In re Safety Explosives Ltd.,** (1904) 1 Ch. 226, and **In re Piers,** (1898) 1 Q.B. 627. Those two cases established that the onus lay on the creditor moving to establish affirmatively that its failure to disclose was through inadvertence, and that inadvertence did not cover a deliberate election although based upon mistake. In the present case the mind of the company was addressed to the point. It did not forget about the assignment, but it mistakenly thought that it was valueless. That was the reason plainly stated by the company's secretary in his affidavit for the non-disclosure of the security. It plainly intended to elect to take the benefit of the bankruptcy in respect of the balance of its debt over and above the value of the securities it had disclosed. In His Honour's opinion, therefore, it could not be allowed to amend its proof on the ground that it omitted to disclose the assignment through inadvertence.

Motion dismissed.

Solicitors for motion: **A. G. Bennett,** Manaia.
Solicitors to oppose: **Halliwell, Thomson, Horner and North,** Hawera.

Ostler, J. September 19; October 7, 1930.
Wellington.

IN RE KINGSWAY (WANGANUI) LTD.

Company—Change of Name—Existing Company Incorporated as "British Motors Ltd"—Approval of Court to Change of Name of Another Company to "British New Zealand Motors Ltd." Refused—Similarity of Names and Objects of Companies—Companies Act, 1908, S. 27.

Motion on a petition for the approval of the Court to a change of name of the above-named company to "British New Zealand Motors Limited." The company was incorporated in September, 1929, under the Companies Act, 1908, as a company limited by shares. The registered office was in Wanganui. Among its objects was the working of an agency for an American motor car known as the "Nash" car. The company wished to drop this agency, to increase its capital, and to acquire the wholesale distributing agency for New Zealand of certain British motor cars, and in order adequately to describe its new business by its name it wished to change its name to "British New Zealand Motors Limited." The motion was opposed by a company incorporated in Auckland in January, 1930, under the name of "British Motors Limited." The main object of the latter company was to deal in British cars both as wholesale and retail agents.

C. P. Brown in support of motion.
Johnston, K.C., and **Fitzherbert** to oppose.

OSTLER, J., said that the question for the Court was whether the name which the Wanganui company desired to adopt so nearly resembled the name of the Auckland company as to be calculated to deceive. His Honour's mind had fluctuated on the point. The word "British" was a common descriptive word in the English language, and no company had the right to a monopoly of such a word: see **Aerators Limited v. Tollitt,** (1902) 2 Ch. 319. Moreover, motor cars were not articles which were bought without much consideration and deliberation by purchasers. But His Honour had come to the conclusion that the name for which approval was sought so nearly resembled the name of the opposing company as to be calculated to deceive. Both companies proposed to deal in British cars. Their business would be similar and the names were so similar that in His Honour's opinion confusion would be bound to occur. There was no evidence before the Court of any confusion having already occurred. Neither company had yet had time to launch out to any extent in its new business. The question of fact which the Court had to decide was really one of opinion based on the similarity of names and of objects. It might be that another mind would view the question differently and come to the opposite conclusion. In His Honour's opinion, however, the names were so similar that there was bound to be confusion where the two companies were carrying on such similar businesses. Either company might do business or even establish a branch in the city of the other. There was always a tendency among the public to shorten a long company name. That tendency was bound to increase the probability of confusion, and letters and telegrams would be often delivered to the wrong company. If the company were to adopt some name in which the word "British" did not come first it would, in his opinion, be entitled to use that word. Such a name as "Anglo-British Motors Limited" would equally well describe the business of the company, and would remove all chance of confusion. The cases were mostly collected in **National Timber Co. Ltd. v. National Hardware Timber and Machinery Co. Ltd.,** (1923) N.Z.L.R. 1258. But the question was purely one of fact to be determined on the circumstances of the case, and His Honour could only determine it on the similarity of the objects of the two companies, and the great similarity in the names, especially when the longer name was abbreviated, as it would be.

Motion dismissed.

Solicitors for Kingsway Ltd.: **C. P. & C. S. Brown,** Wanganui.
Solicitors for British Motors Ltd.: **Alexander, Bennett Sutherland and Warnock,** Auckland.

Kennedy, J. August 12; September 10, 1930. Dunedin.

HUMPHREYS v. WILSON.

Negligence—Collision—Motor Vehicle Travelling with Only One Light at Time of Collision—Breach of Statutory Regulations Not *per se* Giving Right of Action Against Person Guilty of Breach—Negligence Not Proved.

Appeal on law and fact from the decision of a Magistrate in an action brought in respect of a collision which took place at night between a motor-cycle and side-car driven by the appellant (the plaintiff in the action) and a motor car driven by the respondent (the defendant in the action). The plaintiff alleged that the defendant was negligent in (a) failing to keep to his proper side of the road and (b) driving without adequate lights and without lights required by the Motor Vehicle Regulations.

Barrowclough for appellant.

Hanlon, K.C. and **Lloyd** for respondent.

KENNEDY, J., said that the learned Magistrate did not expressly find as a fact that the defendant was failing to keep to his proper side of the road, but it appeared, from his finding that the collision occurred practically in the centre of the road, that he must have found that the defendant travelled slightly over the centre line. Although there was evidence which, if accepted, warranted a finding that the collision occurred further over on the defendant's side, that finding of the learned Magistrate's was not impeached on the hearing of the appeal. If the defendant was, immediately prior to the impact, driving with his right wheel in the centre of the track, so likewise was the plaintiff, immediately prior to the impact, riding slightly over the centre line and the right hand side of his own vehicle was not on his own or proper side, because his position had been changed to some extent at the moment of collision as both the plaintiff and the defendant had turned, each to his own side, to avoid the impact.

At night a careful motorist or cyclist would, in the presence of approaching vehicles, when he neither perceived by the rays of his own light that his own course was clear, nor distinguished the outline of the approaching object indicated by a light, observe the rule of the road. In **Cruden v. Fentham,** 2 Esp. 685, Lord Kenyon said that in driving at night, the rule ought to be strictly adhered to, and never departed from as it was the only mode by which accidents might be avoided. That was merely an application of the rule that persons using a highway were required, when they had notice of special circumstances which enhanced the danger involved in such use, such as fog or darkness, to take such special care as a reasonably prudent man would take to obviate it: 21 **Halsbury** 372. Lord Kenyon's observations had reference to the condition of traffic obtaining in his time, but the risk of accident with motor vehicles at night was not less. When two motor vehicles were approaching each other at night, the difficulty each driver experienced in seeing more than the lights of the other, and in telling whether there was anything in his way, especially when he was just about to pass the other vehicle, was such that prudent drivers would keep to their own or proper side. It might be said with special reference to the facts in the present case, that a careful cyclist would not, at night, in such circumstances, ride as it had been termed "blind" beyond his own side, at a speed described as a slight slackening from 20 miles per hour. If the defendant was negligent in failing to keep to his own side of the road, there was like contributory negligence on the plaintiff's part. His Honour distinguished **Pressley v. Burnett,** (1914) S.C. 874, observing that in the present case the plaintiff was not misled into going to his wrong side by any wrongful act of the defendant and should not have been where he was whether he believed the oncoming vehicle to be a motor cycle or to be a motor car. He was not about to pass a vehicle believed to be going in his own direction as was the case in **Pressley v. Burnett** (*cit. sup.*).

The learned Magistrate found that the defendant exhibited only one light. That was a breach of the Motor Regulations, but a mere breach of those Regulations did not *per se* give the plaintiff a right of action: see **Pressley v. Burnett** (*cit. sup.*) per Lord Dundas at p. 879. The principles to be applied in determining whether the breach of such a statutory regulation gave a right of action to an individual had been discussed by McCardie and Bailhache, J., in a Divisional Court, and by Bankes, Atkin and Younger, L.JJ. on appeal in **Phillips v Brittania Hygienic Laundry Co. Ltd.,** (1923) 1 K.B. 539, and (1923) 2 K.B. 832. His Honour quoted the observation of Atkin, L.J., at p. 840, adding that those observations applied to the Motor Vehicle Regulations. His Honour accordingly concluded that, while the breach of such a regulation as the regulation as to lights might, as McCardie, J., pointed out, be *prima facie* evidence of negligence, it did not *per se* give a right of action against a person so guilty of a breach. The question then was whether, in the circumstances, having but one lamp alight on his motor car immediately prior to the collision was negligence on the part of the defendant. The evidence showed that there were two lights burning when the defendant set out, and assuming, as the Magistrate had found, that there was at the time of the accident but one light, the question arose whether there was negligence in the driver's failure to notice that one light had gone out immediately prior to the collision. The learned Magistrate found that the whole circumstances were quite consistent with the light having gone out shortly before the accident without involving any negligence on the part of the driver. His Honour agreed with that finding. It had not been satisfactorily made out that that finding was wrong. In **Pressley v. Burnett** (*cit. sup.*) the defender was held to be at fault in not exhibiting the lights required by the statutory order. The pursuer was misled thereby, and interpreting the vague bulk of the car as a cart going in the same direction as himself, crossed to the wrong side of the road to pass it. It was held that the presence of the pursuer on the wrong side of the road did not disentitle him to recover because his conduct was induced by a mistaken belief due to the wrongful act of the defender. In that case, then, there was a wrongful act of the defender entitling the pursuer to succeed, unless the pursuer were disentitled by contributory negligence. In the present case there was no such

wrongful act because on the Magistrate's finding of fact, the having but one light, immediately prior to the collision was not in the circumstances, negligence.

Appeal dismissed.

Solicitors for appellant: **Ramsay, Barrowclough and Haggitt,** Dunedin.

Solicitors for respondent: **Downie Stewart and Payne,** Dunedin.

Kennedy, J. July 16; August 18, 1930. Nelson.

IN RE HARKNESS.

Administration—Intestacy—Intestate Widower Leaving Children Surviving—Hotchpot—Gift *inter vivos* By Way of Portion to Daughter by Intestate—Gift to be Brought into Hotchpot in Ascertaining Daughter's Share on Distribution of Estate—Statute of Distributions, 22 and 23 Car. II c. 10, S.5.

On 30th September, 1928, G. A. Harkness, a widower, died intestate leaving him surviving the plaintiff, E. F. M. Harkness, and four other children. The plaintiff lived with her father and mother until her mother's death on 24th October, 1927, and thereafter she lived with her father until he died. In June, 1925, G. A. Harkness gave to plaintiff three Nelson City Council Debentures of £100 each and wrote upon them the words and figures "Present to Ella 20/6/25." The plaintiff collected the interest upon those debentures and applied it as her own money. The present originating summons was issued by the plaintiff asking firstly for a declaration that the three bonds above referred to were her absolute property and did not form part of the intestate's estate, and secondly, whether the gift of the three bonds was an advance by the intestate in his lifetime by portion to the plaintiff and whether, accordingly, in determining the plaintiff's share in the estate of her father, the value of the bonds had to be brought by her into hotchpot.

Harley for plaintiff.
Fell for defendants.

KENNEDY, J., said that, as to the first question, the bonds were clearly the property of the plaintiff. As to the second question His Honour said that the estate of the deceased was distributable by equal portions to and amongst his children "other than such child or children . . who . . . shall be advanced by the intestate in his lifetime, by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made; and in case any child . . . . shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid then so much of the surplusage of the estate of such intestate, to be distributed to such child or children as . . . were advanced in the lifetime of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated": Statute of Distributions (22 and 23 Car. II Cap. 10 s. 5). The end and intent of the statute was to make the provisions for all the children of the intestate equal as near as could be estimated: **Edwards v. Freeman,** 2 P. Wms. 435; **Williams on Executors,** 11th Edn. 1240. The rule applied, as between children, whether the intestate left a widow and children or children only: 11 **Halsbury,** p. 19. Was then the gift of the three bonds an advance by way of portion? A distinction was to be drawn between money given as casual payments or to relieve a child from temporary difficulties and sums given to start a child in life or to make provision for him. The latter only were to be deemed advances by way of portion, but if the gift was of large amount there was a *prima facie* presumption that it was given by way of portion: 11 **Halsbury,** 21. His Honour referred also to **Taylor v. Taylor,** L.R. 20 Eq. 155, 158, per Jessell, M.R., and to **Re Scott, Langton v. Scott,** (1903) 1 Ch. 1, 13, 16. In the present case the gift was of a substantial amount and *prima facie* it was a gift by way of portion. The circumstances did not rebut that presumption. Accordingly, in ascertaining the plaintiff's distributive share in the estate of the intestate, she must bring into hotchpot the gift of three bonds.

Solicitors for plaintiff: **Harley and Moynagh,** Nelson.
Solicitors for defendant: **Fell and Harley,** Nelson.

Court of Arbitration.

Frazer, J. September 19; October 1, 1930. Dunedin.

PARKHILL v. SCAIFE.

Workers' Compensation—Worker Employed as Musterer on Sheep Farm Injured by Accidental Discharge of Gun While Proceeding After End of Day's Work to Shoot His Own Sheep Dog which had Earlier in Day Worried Employer's Sheep—Accident Not Arising Out of and In Course of Employment.

Claim for compensation under the Workers' Compensation Act, 1922. The plaintiff was a musterer, and the defendant who was the owner of Glendhu Station, Lake Wanaka, employed him on his station during the month of April, 1930. The plaintiff's story was that on 13th April, while he was mustering the defendant's sheep, he found a young dog worrying a sheep. The dog was the plaintiff's own property, and was being trained by him as a sheep dog. The plaintiff decided to destroy the dog and, when he had finished work for the day, and had tied up his dogs, he took his gun and walked in the direction of the kennels, intending to shoot the animal. As he was getting through a wire fence, the gun was accidentally discharged, and the plaintiff's left index finger was partly blown off, and had to be amputated. The plaintiff claimed compensation in respect of this injury.

O'Regan for plaintiff.
W. G. Hay for defendant.

FRAZER, J., delivering the judgment of the Court, after reviewing the evidence in support of the plaintiff's case, said that even if the Court assumed in the plaintiff's favour that the dog had worried one of the defendant's sheep, that he had decided to shoot it for that reason, and that he was injured while carrying a gun for that purpose, it had still to decide whether the accident arose out of and in the course of his employment. It was a term of a musterer's contract of service that he was to provide himself with a team of trained dogs. The employer supplied food for the dogs, but had no further responsibility in respect of them. Some sheep-owners did not permit young dogs to be trained on their stations; and where a musterer was permitted, expressly or tacitly, to bring a young dog on to a station for training, the permission conferred a limited privilege only. The training of a dog rendered it more valuable to the musterer whose property it was, and if a dog was found to be dangerous or useless, the musterer had no right to keep it on the station any longer, but must destroy or remove it.

If the plaintiff had had a gun with him when he found the dog worrying a sheep, and had shot it then and there, it might have been argued that the shooting of the dog was an act done for the protection of his employer's property, and was accordingly an incident of his employment. If, however, as the plaintiff alleged, he had taken the dog back to the kennels, and had decided that he would destroy it that evening, could it be said that the shooting of the dog in those circumstances was an incident of his employment? Was the destruction of the dog an act done in pursuance of a duty, or even an act reasonably incidental to a duty, that he owed to his employer, *qua* employer, under his contract of service? He had brought it on to the station for his own purposes and for his own benefit, and he had decided that it was dangerous and useless. His privilege of keeping the dog on the station had ceased to exist. He realised that if it worried any more sheep, he would probably be held liable for damages, and he came to the conclusion that the wisest thing to do with the animal was to shoot it. His object was principally to rid himself of a useless dog, which he considered was not worth training any further, and to save himself from possible pecuniary loss arising from its depredations; only very remotely was his object to protect his employer's property. The plaintiff's injury was due to an accident that arose out of the incidents of a privilege that he enjoyed, and out of an act done in furtherance of his own interests; and the Court could not find that the accident arose out of anything that was unambiguously or reasonably referable to his employment, as was the case in **White v. Borrie,** (1923) G.L.R. 133, and **Brown v. East Coast Rabbit Trustees,** 17 G.L.R. 593.

Judgment for defendant.

Solicitors for plaintiff: **O'Regan and Son,** Wellington.
Solicitors for defendant: **W. G. Hay,** Dunedin.

Compensation under the Public Works Act, 1928.

By A. C. Stephens, LL.M.

(*Continued from page 271.*)

The Court.

The Court for filing the claim and notices depends on the amount of the claim: Sec. 55 (4).

The claim is heard by a Compensation Court which may consist of a Judge of the Supreme Court with assessors, a Magistrate with or without assessors, or a single person: Secs. 58-65.

The power of a Judge under Sec. 61 to appoint a Magistrate to preside in the Court in his stead, where the claim is more than £250 and not more than £1,000, is exercised by the Judge of his own motion and not on the motion of the parties: *Easson v. Mayor of Greymouth*, 9 G.L.R. 156.

Objection may be made by either party to the appointment of any assessor and the President may order the assessor against whom objection is taken to be discharged: Sec. 67. It is recognised that an assessor is an advocate for the party who appoints him, and bias caused by anything short of pecuniary interest in the subject matter of the proceedings is not treated as in itself necessarily disqualifying him or justifying the setting aside of the award. Where, however, an assessor was a partner in a firm which was acting for the claimant, and the firm was to be remunerated by a percentage on the amount of the award, it was held that the assessor had such a pecuniary interest in the subject matter as would disqualify him for the position: *Re Skene*, 24 N.Z.L.R. 591; 2 G.L.R. 153. The right to object to an assessor may, however, be waived. *Ibid.* A paid servant of a party should not be appointed as assessor, but no objection can be taken to a servant who has retired on superannuation: *Joseph v. Mayor of Wellington*, 3 N.Z.L.R. S.C. 291; *Mayor of New Plymouth v. Minister of Public Works*, 33 N.Z.L.R. 1541; 16 G.L.R. 598. Liability to pay rates on property on which the compensation may become a charge does not amount to a pecuniary interest in the subject matter: Sec. 68. In *Morrison v. Wellington and Manawatu Railway Co. Ltd.*, 10 G.L.R. 32, an assessor was discharged on the ground of strong personal animus towards the plaintiff. An unreasonable objection to an assessor will not be sustained: *Wellington Diocesan Board of Trustees v. Mayor of Wellington*, 6 G.L.R. 315.

If a Compensation Court has been duly constituted to adjudicate upon a claim, the claimant cannot withdraw or abandon his claim and commence proceedings *de novo* in respect of the same claim. When a Court has been created under the Act, that Court alone has jurisdiction to deal with the claim except where special provision is made for a different course as, for example, under Secs. 70 and 77: *Chairman, etc. of County of Kairanga v. Bannister*, 33 N.Z.L.R. 1184, 17 G.L.R. 77. See also *Yule v. Chairman, etc., of County of Featherston*, 32 N.Z.L.R. 52; 15 G.L.R. 87.

Where a Compensation Court has partially heard a claim and then dissolved without making an award in consequence of a compromise by the parties, the proceedings are at an end. A new claim in the same terms is a nullity and a new Court cannot be constituted: *Minister of Public Works v. McLean*, 6 N.Z.L.R. 273. See also *Re Wilkin*, 1 N.Z.L.R. C.A. 333.

Provision is made for filling vacancies in the Court: Sec. 70.

If the Court is unable by a majority to agree on an award, the President discharges the assessors and a fresh Court is constituted in the same manner as the first one: Sec. 77.

The Hearing of the Claim.

The time and place of the first sitting of the Court are fixed by the President on application by one of the parties: Sec. 71; *Yule v. Chairman, etc., of County of Featherston*, 32 N.Z.L.R. 52; 15 G.L.R. 87.

The Court may proceed to hear and determine the claim in default of appearance by the claimant or respondent on proof of service of notice of the sitting on the other party: Sec. 72.

Provision is made for the adjournment of the sittings of the Court: Sec. 73. This section is only directory. The Court does not cease to exist if an adjournment is not made to a definite date: *Chairman, etc.*, of *County of Kairanga v. Bannister*, 33 N.Z.L.R. 1184; 17 G.L.R. 77.

The claimant is limited in regard to his evidence to the matter disclosed in the claim, but he may, by leave of the Court, amend the claim subject to conditions: Sec. 74.

The Court has an unfettered discretion in regard to the admission of evidence: Sec. 75 (4).

If a question of law arises in any case before a Compensation Court, the President may hear and determine it, or he may, if he thinks fit, state a case for the decision of the Supreme Court. This decision must then be followed by the Compensation Court on making its award: Sec. 78.

No appeal lies from the determination of the President on a point of law or from a decision of the Supreme Court on a case stated by the President: *Plimmer v. Wellington Harbour Board*, 7 N.Z.L.R. 264, 267; *Paterson v. Knapdale Road Board*, 11 N.Z.L.R. 599; *Russell v. Minister of Lands*, 17 N.Z.L.R. 241, 1 G.L.R. 15. An injunction will not be granted by the Supreme Court which will have the effect of over-ruling the decision of the Supreme Court on a case stated by the President as such a course would amount to the regulation of the proceedings of a Compensation Court in a manner which is not contemplated by the Act: *Compton v. Hawthorn and Crump*, 22 N.Z.L.R. 709; 5 G.L.R. 286.

Where, however, a Compensation Court has declined to exercise jurisdiction upon a mistaken ground, a writ of mandamus will lie to compel it to hear and determine the claim: *Plimmer v. Wellington Harbour Board* (*supra*); *Easson v. Ward*, 7 G.L.R. 398; *O'Brien v. Chapman*, 29 N.Z.L.R. 1053; 12 G.L.R. 744 (*sub. nom.*) *O'Brien v. Minister of Public Works*). The motion for a writ of mandamus may apparently be removed into the Court of Appeal: *Plimmer v. Wellington Harbour Board* (*supra*).

Apparently a case stated by the President of a Compensation Court for decision by the Supreme Court cannot be removed into the Court of Appeal: *Jenkins v. Mayor of Wellington*, 15 N.Z.L.R. 118, 124.

THE AWARD.

For the principles on which the amount of compensation is assessed, see above.

Every question before a Compensation Court is determined by a majority of the members: Sec. 76. This section is obviously subject to Section 78, which provides that questions of law are to be determined by the President or by the Supreme Court on a case stated by the President.

If the Court is unable by a majority to agree on an award, a new Court is constituted: Sec. 77. In *Re Skene's Award*, 24 N.Z.L.R. 591, 2 G.L.R. 153, the Court was unable to make an award and amounts separately assessed by the President and each of the assessors were announced to the parties who thereupon agreed upon an amount which was embodied in an award by the Court.

The Court may award a gross sum or it may award a particular sum in respect of any one or more of the items in the claim subject to conditions: Sec. 82.

The award must fix the fees to be paid to the assessors: Sec. 83.

No award is void through any error or omission in matter of form: Sec. 89. The award is made in writing, signed by the President, and sent by him to the Registrar of the Supreme Court to be filed by him in that Court: Sec. 90 (1). Provision is made for the alteration of the award within one month of the time it is made: Sec. 90 (2). The subsection is, however, not clear on various points. Does the power to reverse alter or modify extend to justify the rectification of an omission? Does the power of alteration exist after the award has been filed in the Supreme Court? Does it exist after the Compensation Court has been dissolved? (Refer to heading "Costs"). Does the subsection authorise the addition of a direction as to costs when the award is defective in that respect, or does it merely authorise an order as to the costs incidental to the alteration? These matters will require to be settled by judicial decision.

An award is final as regards the amount of the award but not as regards the right of the claimant or any other person to receive the same: Sec. 90 (3).

If the amount of the award is not paid into the Public Trust Office under the Act within sixty days after the filing of the award in the Supreme Court, the award has the effect of a judgment of the Supreme Court and may be enforced accordingly subject to the provisions of the Act: Sec. 90 (4).

ATTACKING THE AWARD.

Although a decision of the President of the Compensation Court on a point of law is not subject to appeal, an award of the Compensation Court can be set aside by the Supreme Court: *Williams v. Mayor of Wellington*, 3 N.Z.L.R. C.A. 210; *Joseph v. Corporation of Wellington*, 5 N.Z.L.R., S.C. 37, 40.

1. Form of proceeding.

In some of the earlier cases the party attacking the award obtained a rule *nisi* calling upon the other party to show cause why the award should not be amended or set aside, as the case might be: See *Re Wilkins' Claim*, (No. 2), 1 N.Z.L.R. S.C. 141; *Williams v. Corporation of Wellington*, O.B. & F. S.C. 34.

In *Koetz v. Waverley Town Board*, 3 N.Z.L.R. S.C. 48, the respondent moved to set aside a judgment of the Supreme Court arising from the filing by the claimant of his claim in that Court on failure by the respondent to give notice of non-admission. See also *Henson v. Mayor of Cambridge*, 12 N.Z.L.R. 251, and *Johnston v. Mayor of Wellington*, 19 N.Z.L.R. 733.

The usual course is to move to set aside the award or remove it from the file of the Supreme Court: *Wilkin v. Minister of Public Works*, 1 N.Z.L.R. C.A. 333; *Joseph v. Corporation of Wellington*, 5 N.Z.L.R. S.C. 37; *Minister of Public Works v. McLean*, 6 N.Z.L.R. 273, 291; *Re Skene*, 24 N.Z.L.R. 591, 2 G.L.R. 153; *Kellick v. Minister of Public Works*, (1927) G.L.R. 406.

The motion may be removed into the Court of Appeal. *Wilkin v. Minister of Public Works* (*supra*).

2. Grounds for attacking Award.

Awards have been attacked on the following grounds:—

(a.) That the amount of the costs had been improperly inserted in the award: *Re Wilkin*, 1 N.Z.L.R. S.C. 141.

(b.) That the award had been made after the Court had been dissolved and reassembled: *Wilkin v. Minister of Public Works*, 1 N.Z.L.R. C.A. 333.

(c.) That as a matter of law no compensation was payable: *Williams v. Mayor of Wellington*, 3 N.Z.L.R. C.A. 210. This is a ground for setting aside the award—although part of the compensation is properly awarded: *Koetz v. Waverley Town Board*, 3 N.Z.L.R. S.C. 48.

(d.) That the award had been made on a new claim by a new Court after the first claim had been abandoned and the first Court dissolved: *McLean v. Minister of Public Works*, 6 N.Z. L.R. 273.

(e.) That the respondent has not carried out the contemplated work so that the claimant has suffered no injury: *Henson v. Mayor of Cambridge*, 12 N.Z.L.R. 251.

(f.) That the claim was made after the time limit had expired: *Sullivan v. Mayor of Masterton*, 28 N.Z.L.R. 921; 12 G.L.R. 136.

As to making use of affidavits by assessors in proceedings subsequent to the award, see *Plimmer v. Wellington Harbour Board*, 7 N.Z.L.R. 264; *Paterson v. Knapdale Road Board*, 11 N.Z.L.R. 599.

COSTS.

If the award does not exceed half the claim the claimant is not entitled to costs, and the Court may in any case refuse to award costs. If costs are allowed they are fixed on a party and party basis. A direction as to payment of costs must appear in the award: Sec. 84.

Where the Court is constituted by one person under Sec. 65, his fee should be fixed by the agreement under which he is appointed. He has no power to make an order directing the respondent to pay his fee where the award is less than one half of the amount of the claim: *Columb v. Otakia Drainage Board*, 9 G.L.R. 35.

In *Re Wilkin*, 1 N.Z.L.R. C.A. 333, it was decided that if the award is defective in regard to costs, the defect cannot be remedied after the Court has dissolved. The opinion expressed by Williams, J., in *Re Wilkin* (*No. 2*), 1 N.Z.L.R. S.C. 141, as to the power of the Court to reconsider an award for the purpose of assessing costs

is now confirmed by statutory provision, as the Court has express power within one month of the making of the award to reverse alter or modify it and to hear such evidence and make such order as to costs or otherwise as the Court may deem just: Sec. 90 (2). It would not be safe to assume that this provision will enable the Court to re-constitute itself after it has dissolved. Refer to headings "The Court," and "The Award." The proper course where costs remain to be settled is to adjourn the Court to a fixed date: See *N.Z. and Australian Land Co. v. Minister of Lands*, 13 N.Z.L.R. 714, 717.

Witnesses' expenses should be allowed according to the principles of Table "E" of the Supreme Court Code: *Gillies v. Auckland City Corporation*, (1916) N.Z.L.R. 162; (1916) G.L.R. 149.

Unless there is some reason to the contrary, costs in the Compensation Court should be allowed on the Supreme Court scale: *Re Forest Gate Estate*, 4 G.L.R. 41.

In *Yule v. Chairman, etc., of County of Featherston*, 32 N.Z.L.R. 52, 15 G.L.R. 87, it was held that where a claimant had abandoned his claim before the Court was summoned, there was no power to summon the Court and no award as to costs could be made. Under Sec. 87 of the Act, however, the Court has now power to award costs under these circumstances. Costs may also be awarded even though the Court decides that it has no jurisdiction to hear the claim: Sec. 86. In neither of these two cases is the appointment, presence, or concurrence of assessors necessary to the constitution or jurisdiction of the Court: Sec. 88.

A direction by a Compensation Court as to costs may be varied or revoked by the Supreme Court if the compensation is paid into the Public Trust Office under Sec. 91.

(To be continued.)

Taranaki District Law Society.

ANNUAL CONFERENCE.

The Third Annual Conference of members of the Taranaki District Law Society was held at New Plymouth on 10th September, 1930. The law offices throughout the district were closed for the day and there was a large and representative attendance of members. The morning was devoted to golf or to a visit to the various oil wells at present being drilled at New Plymouth; the members then lunched together and the afternoon was devoted to the business of the Conference.

Mr. L. A. Taylor read a paper on "The Native Land Laws of New Zealand," and Mr. J. C. Nicholson a paper on "Local Authorities' Borrowing Powers." Mr. F. W. Horner led a discussion on the question of procuration fees. Mr. G. M. Spence explained the proposals of the New Zealand Law Society with reference to making public the protection afforded by the Law Practitioners Amendment (Solicitors' Fidelity Guarantee Fund) Act. Interesting and useful discussions followed the presentation of the various subjects and the Conference terminated at 5 p.m. with a vote of thanks to the President, Mr. C. H. Weston, who had occupied the chair throughout the proceedings.

Appeal to Privy Council.

Lord Salvesen's Views.

We have been honoured by Lord Salvesen with the following letter expressing his views on the subject of the right of appeal to the Judicial Committee of the Privy Council.

"Mandal,
Norway.

"Sir,

"Although I am on holiday here I cannot refrain from expressing my pleasure at the resolution of the Annual Conference of the Legal Profession of New Zealand recommending the retention of the right of appeal to the Privy Council. I have always been of opinion that the ties between the Dominions and the Mother Country should be strengthened rather than weakened. The right of appeal to the Privy Council is one of the few remaining material links between us, and the desire of a section of the population in other Dominions to sever this link can only spring from a feeling of hostility to the British people as such. New Zealand has always been the most consistently loyal of all the Dominions, a fact which is no doubt attributable to its people being almost exclusively of British—and I am proud to think largely of Scottish—stock.

"The existing right of appeal to the Privy Council as the Supreme Court of the Empire, as the House of Lords is of Great Britain and Northern Ireland, is one which affects only litigants in cases of major importance and difficulty. It affords an opportunity to the losing litigant, who in some cases may actually have a majority of judicial opinion in his favour, of obtaining a final pronouncement as to the justice of his cause. If he succeeds, his opponent cannot justly complain of an error in his favour being corrected. If, on the other hand, he fails, the successful litigant is protected against the additional costs incurred by the security that must be found by the appellant before his appeal is entertained. But the value of the right of appeal to an exceptionally able and experienced body of Judges, free from all possible local bias, is not to be measured by the number of cases in which the right is exercised. The fact that such a right exists exercises a steadying influence on all the tribunals from which an appeal may be taken, and prevents anything in the nature of autocratic judgments, which it may be difficult to find reasons to justify. In an appeal (not from New Zealand) in which I sat as a member of the Judicial Committee, a plaintiff who had been seriously slandered in a newspaper had failed to obtain any redress from a jury although there was no attempt to justify the slander, and the Dominion Court of Appeal had refused to set aside the verdict. The explanation of a verdict which could not be supported by any of the evidence led lay in the fact that the plaintiff was a lawyer, and owing to some recent disclosures of misconduct by other lawyers a popular prejudice had arisen against all members of the profession. The Privy Council had, in the circumstances, no difficulty in redressing a wrong which, if no right of appeal had existed, would have gone unredressed. Such cases are fortunately rare, but the fact that they may occur is in itself sufficient justification for the existence of an ultimate Court of Appeal.

" The demand for the abolition of the right of appeal does not come from the Judges, who might be supposed by some to resent any review of their judgments. When I was in Cape Colony last winter, I ascertained from two ex-Chief Justices of the Supreme Court there that, so far from resenting an appeal in an appropriate case, they rather deprecated the reluctance with which the Lords of the Privy Council who, in the case of this Dominion must first give leave to appeal, exercised their right. As for twelve years a member of one of the Divisions of the Court of Sessions in Scotland (which is our Supreme Court) I personally welcomed an appeal to tne House of Lords when the importance of the case or of the principles of law involved justified such a course ; and I gather that your Judges take the same view. My own experience of my colleagues on the Bench is that they are far more concerned that difficult questions of law should be authoritatively settled, than that their own particular view should be sustained, although it is only human nature that they are gratified when their view coincides with that of the final tribunal.

" Perhaps it is right to add that as an unpaid member of the Judicial Committee of the Privy Council—an honour which was conferred on me on my retiral after seventeen years' service on the Scottish Bench—I have no conceivable interest in its continuance as the Supreme Tribunal of the Empire. I feel, however, very strongly that litigants in the Dominions should have the same privilege of an ultimate appeal as is enjoyed by British litigants, for the members of the two tribunals are in large measure the same and comprise the highest judicial talent that the Empire can produce.

I am, etc.,

EDW. T. SALVESEN."

Bench and Bar.

We regret to record the death of Dr. Frederick Fitchett, LL.D., C.M.G. The late Dr. Fitchett was born in Lincolnshire, England, 1851. He commenced life at sea, spending two years as a sailor before the mast. Next, he took up civil employment in Melbourne, and later came to New Zealand, where he joined the staff of the Bank of New Zealand. He attended the University where his scholastic career was one of brilliance. He won a senior Scholarship in Greek and a senior Scholarship in Latin, and took the Bowen Prize in English. He took first class honours in political science and finished his University career in 1880 with the degrees of M.A. and LL.B. The degree of LL.D. was conferred upon him in 1887. On being called to the Bar in 1881 he commenced practice in Dunedin in partnership with Mr. Thornton. In 1887 he was elected to the House of Representatives as Liberal member for Dunedin Central. In 1900 Dr. Fitchett was appointed Law Draftsman and Crown Law Officer, and a year later he became Solicitor-General. In 1907 he represented New Zealand in London at the Conference on the control of the New Hebrides. In 1909 he accompanied Sir Joseph Ward to London in connection with the Webster Land Claim. From 1910 to 1917 he held the office of Public Trustee. In 1911 he received the distinction of C.M.G. After his retirement from the Public Service Dr. Fitchett practised for some years in Auckland.

Australian Notes.

By WILFRED BLACKET, K.C.

From Perth (W.A.) comes the report of a Police Court decision that the sale of " chocolate liqueurs," although they enclose a certain quantity of proof spirit, is not a breach of the Licensing Act. The Act on which the case was decided prohibits the sale of " beverages " containing alcohol.

At Wagga Wagga (N.S.W.) the question as to the propriety of a solicitor who is an alderman appearing for clients prosecuted by the council has again been raised. A solicitor, of course, would be a very useful alderman, but being an alderman he cannot accept a retainer from the Council. It seems hard that he should have to refrain from appearing for clients who are being prosecuted by the council. But, as the health inspector of Wagga Wagga says, it is hard on him that he should be opposed in Court by " one of his bosses."

Ermington (N.S.W.) Council has recently been interested in a point of law. The State Hospital for Mental Defectives which is within the municipality possesses some cows, and these strayed on to the road and were impounded. Charges amounting to £2 8s. 0d. were demanded, and as the attendance of the cows was required in the milking yard, the amount was paid under protest, but refunded upon sight of the Crown Solicitor's opinion citing Chitty's Prerogatives of the Crown wherein it is laid down that " no one can take the King's beasts as estrays." If Chitty had known what a lot of strange business ventures the King would embark upon in our days—buying frozen rabbits for instance—he would probably have been a little more careful in some of his statements.

Electricity M.M. Co., in March, 1929, by instrument in writing appointed Manufacturers P.P. Ltd. its sole agent for sale of certain products. The agreement was one that was liable to stamp duty, but was not stamped till June, 1930. S. 40 of the Stamp Duties Act (N.S.W.) enacts: that duty on an agreement " may be denoted by an adhesive stamp." Section 22 provides that where duty may be paid by " an adhesive stamp the document shall not be deemed to be duly stamped unless the person required by law to cause such adhesive stamp to be affixed cancels the stamp at the time of the execution of the writing by him." Section 25 provides that " unless there is any other express provision made by this or any other Act " unstamped documents may be stamped with an impressed stamp upon payment of a fine. The Manufacturers Company tendered this document in evidence, but objection was raised to its admission, and it was strenuously argued that sections 40 and 22, read together, excluded the operation of section 25, but it was held by Street, C.J., that " may " in section 40 imported a permissive power, not an imperative direction, and that section 25 applied.

A question of very great importance to execution creditors and mortgagees has just been decided by Harvey, J. C.J.E., (N.S.W.). Under s. 108 of the District Courts Act the Registrar may issue a fi. fa. under a judgment and may " seize and cause to be sold any lands tenements or hereditaments of or to which the person named in the writ is seized or entitled or

which he can at law or in equity dispose of." A judgment debtor, one Lavender, was registered in the Land Titles Office as mortgagee of certain lands. The D.C. Registrar issued a fi. fa. intended to bind the interest of the debtor in these mortgages and it was tendered at the Land Titles Office for registration. The Registrar-General, who had almost simultaneously received similar process although no such procedure had ever been resorted to before, applied to the Equity Court upon case stated and asked for decision of the questions: "(1) Whether a mortgage of lands under the Real Property Act could be taken in execution and sold under a writ of fi. fa. issued out of the District Court. (2) Whether the lands, the subject of the mortgage, could be sold by the District Court Registrar under the mortgagee's power of sale by way of writ of fi. fa." His Honour held that the words of the Act must be limited to lands which the judgment debtor could assign or dispose of for his own, sole, absolute use and benefit. Neither provision could apply to lands vested in a trustee with a presently exercisable power of sale: and by parity of reasoning, the words could not be held to apply to a power of sale vested in a judgment debtor, which was clogged with fiduciary duties. It followed, therefore, from the opinions he had expressed that the writ should not be registered.

In *Attorney-General v. North Shore Gas Coy. Ltd.* the North Shore (Sydney) Gas Co., in 1928, determined to build a new gas-holder, and obtained permission of the local Council to that end. The site chosen was at Oyster Cove, a secluded little bay with steeply sloping cliffs on three sides of the site. The holder had its foundations close to water level and when completed extended more than 150 feet upwards towards the welkin, and its top was just about as high as the adjacent cliffs. The nearest street was more than 200 yards distant. When the building was almost completed some local residents, who found that the erection interfered with their view of Our Beautiful Harbour, instituted a suit in Equity to compel the company to cut down the building to 100 feet, the maximum height allowed under the Height of Public Buildings Act. During the period of its erection it had not occurred to anyone that a gas-holder at Oyster Cove could be a "building" within that Act and for the purposes of his decision it was not necessary for Mr. Justice Long Innes to determine whether it was so or not. The evidence showed that there would be a loss of £100,000 to the company if the building were cut down to 100 feet and that this would necessitate an increase of 3d. per 1,000 feet in the cost of all gas supplied by the company, and His Honour thought there was no evidence upon which he could find that this building had depreciated the value of any property in the neighbourhood. His Honour also found that there had been no deliberate evasion or breach of any statute by the company, and decided that the benefits to be achieved by granting an injunction, and the cost of complying with it, were so enormously disproportionate, that the injunction prayed ought not to be granted. Long Innes, J., is always careful and elaborate in his judgments, and his examination of authorities in this case makes the decision a very valuable precedent.

In *R. v. Partridge and Others*, Central Criminal Court Sydney, Mr. Justice Ferguson spoke some wise words as to the necessity of drawing particulars of overt acts in charges of conspiracy with such precision that the Court and the defendants would be able to see what evidence the Crown relied upon to prove the charge in the indictment. In this case there had been a lengthy hearing at the Police Court revealing extraordinary actions causing much loss to policy-holders and shareholders of a company and the acts proved in evidence there were stated as the "overt acts" relied upon by the prosecution. Some of this evidence, although indicating crimes of one kind or another did not go to prove the conspiracy "that the defendants had conspired to misrepresent the financial position of (the company) with intent to defraud persons doing business with the company." At the conclusion of the Crown case His Honour said that he would withdraw from the consideration of the jury all evidence that did not directly bear upon the charge as above defined, and he then directed the jury to acquit all the defendants. He does not appear to have stated that there was no evidence to support the charge in the indictment, his criticism of the Crown case apparently resting upon the fact that a great deal of inadmissible evidence had been admitted, but obviously he must have found that there was no evidence to go to the jury. Then, as the trial had been lengthy, he gave them a long holiday from service as jurors: and it is probable that they will occupy a part of this time in pondering on the peculiarities of criminal court proceedings.

Fisher v. Bell and Others was an unusual claim at common law in an action tried before Street, C.J. Plaintiff was entitled in reversion to a one-fifteenth share in a large estate. The executors, finding it necessary in the interests of the estate to sell a property known as the Grand Hotel, applied to the Equity for the power necessary to enable them to do so, and a sale for £50,000 was sanctioned. The plaintiff was written to by the defendants, solicitors for the executors, but no reply being received from him they joined him as a co-petitioner. He took no action upon this, and no part in the suit, but in his present action complained that being so joined he could not oppose the sale. He stated in his evidence, and called some other evidence to show, that the property was worth £87,000. In nonsuiting him, the Chief Justice said: "The wrong complained of in joining him as a co-petitioner was not a breach of contractual relations between him and defendants. Plaintiff had the right to expect that defendants, in acting as solicitors for petitioners, would not introduce him into the petition as a co-petitioner without his authority, but if this was done, plaintiff's only right was to demand that no damage should be done to him by the inclusion of his name. If that was so, there was no injury if there was no damage. A second reason for the failure of plaintiff's case was that no damage had been proved. The parties interested in the property concurred in approaching the Equity Court, and before Mr. Justice Harvey made the order which he did he had to be satisfied that it was proper and consistent with due regard to the rights of all persons concerned. If plaintiff had appeared as a respondent and had put before the Court such arguments and points of view as had been put before the jury in this case it by no means followed that his views and his evidence would have prevailed and that a different result would have been reached. I cannot say what would have happened. Damages, to be recoverable, must be proximate, not remote, and must be such as flow naturally from the wrong complained of. Here it does not appear that the order that was made was the necessary effect or result of the failure to give proper notice to the plaintiff, nor has he proved that but for his absence the order would not have been made. No reason is shown why it was that the order was made and what material the Court had before it."

Forensic Fables.

THE HABITUAL CRIMINAL AND THE FIRST OFFENDER.

One Winter's Evening a "Black Maria" Containing a Habitual Criminal and a First Offender was Proceeding from the Old Bailey towards Wormwood Scrubbs. The Habitual Criminal Wore a Cloth Cap, and his Lean Neck was Enveloped in a Handkerchief. The First Offender was Richly Dressed and of Portly Build. On his Head he Carried a Silk Hat, and his Overcoat, which was Lined with Mink, had Cuffs and Collar of the Same Admirable Fur. He was Smoking (by Permission of the Kindly Janitor) a Long and Fragrant Corona. Engaging the First Offender in Conversation, the Habitual Criminal Invited his Sympathy. This was his Tenth Conviction for Stealing and Receiving. He was to Do Seven Years' Penal Servitude and Five Years' Preventive Detention. The Habitual Criminal didn't Suppose he had Pinched Fifty Pounds' Worth from First to Last, and he was Jiggered if he hadn't Done Twenty-three Years altogether. Rotten Luck, the Habitual Criminal Called it. The First

Offender Gently Demurred. "You Ought," he said, "to have Shown more Restraint. Habitual Criminality is not to be Tolerated. You have only Yourself to Thank for your Present Unhappy Situation." Throwing away his Cigar, the First Offender Proceeded: "Till a Year ago I Led a Blameless Life. Then, having Dissipated my Fortune in Riotous Living, I Started a Bucket-Shop. My Distinguished Appearance and Perfect Manners Enabled me to Rob Widows, Orphans, Clergymen, and University Professors of a Sum Approaching a Hundred Thousand Pounds; and, but for the Treachery of a Trusted Clerk, I should Still be Going Strong. The Judge who Tried me was a Man of Intelligence and Discernment. He very Properly Reminded me that the Disgrace I had Brought upon my Family, my Public School, and my University was in itself a Severe Punishment, and he Directed, as it was my First Offence, that I should be Imprisoned in the Second Division for Six Months." When the Kindly Janitor at last Succeeded in Detaching the Habitual Criminal from the First Offender, the Latter was Suffering from a Contused Eye and a Bleeding Nose. He had also Lost Two Front Teeth.

MORAL: *Be Merciful.*

Law in the East.

The Influence of European Law in Japan.

The August number of *Pacific Affairs* contains a very interesting article by Kanzo Takayanagi, Professor of Law in the Imperial University of Japan, on "Occidental Legal Ideas: Their Reception and Influence." The Englishman regards his system of justice as so superior to all others that it is not a little surprising to find what a small part English law has played in Japan compared with French and German law.

The translation of the French Codes by a Bureau for the Investigation of Institutions gave the Japanese their first inkling of occidental legal ideas. In 1872 a French law school was established, in 1874 English law began to be taught, in 1886 a German law section was instituted. A law of 1875 ordered the judges to decide cases in conformity with the express provisions of the law, and in default thereof according to custom, and in default of custom according to reason. The latter was resorted to in the majority of cases and the judges resorted to occidental legal sources for their guidance, and occidental legal rules and doctrines crept into the decisions of the Japanese Courts.

From 1875, when a Committee for the compilation of a Civil Code was first appointed, to 1899, when the Commercial Code was put into effect, was a period of the preparation, publication and discussion of Codes. The Civil Code was exclusively French and the Commercial Code exclusively German, and the Criminal Code was modelled chiefly after the French Code.

About 1890 a tendency of reaction against sweeping occidentalization appeared in the form of a nationalist movement, observable in the field of law in a heated controversy over the question of the immediate enforcement of the Civil and Commercial Codes. The postponement party, jurists trained in the English Common Law, stood for the juristic idea of the historical school that law was an expression of national character and a product of history, and that the introduction of a foreign code into Japanese society was absurd and preposterous. The immediate enforcement party, jurists trained in French jurisprudence, contended for the juristic idea embodied in the theory of the school of natural law, viz., that law was based upon human nature, that it is of a universal character, and that inasmuch as the codification of a civilized country like France was a refined expression of human nature or of the universal character of law, it could be adopted by Japan. The postponement party won for the moment, but the codes eventually became law. One of the most striking phenomena of the period from 1900–1913 was the dominance of German legal science in Japan. Scholars who went abroad studied law in Germany, the German law section of the Imperial

University became the most popular, and the enrolment of law students in this section grew far in excess of that in the French or English sections. As the graduates attained positions on the bench and at the bar, German legal science coloured not only the legal science, but also the judicial administration of Japan.

But the outbreak of the Great War threw discredit upon German legal science, especially its exegetical aspect. The so called Free Law movement, which attaches more importance to the equitable interpretation of the codes than to the logical development of their texts, began to be advocated, and the philosophy of law became popular among Japanese jurists.

Finally, the author asks: "Is not the law of a nation the reflection of its national life? How can an oriental nation like Japan, with a history and a mode of life all its own, adopt and make use of laws and legal institutions, which are after all the historical products of the occidental nations." He points out that there are many parts of Japanese laws which, because of their slavish imitation of occidental precedents have proved unworkable in the actual administration of the law, and have had to be overhauled either by legislation or judicial methods. "A legal system, having a strong national flavour in its contents, will be created in the future through the efforts of our jurists; but despite this fact legal progress in Japan and legal progress in the Occident will, on the whole, follow similar lines."

Judicial Inspections.

A judicial view has been said to be for the purpose of enabling the tribunal to understand the questions raised, and to follow and apply the evidence: per Lord Alverstone in *London General Omnibus Co. Ltd. v. Lavell*, (1901) 1 Ch. 135. But at any rate in "passing-off" cases the Judge is entitled to use his own eyes: *Re Bourne's Trade-marks*, (1903) 1 Ch. 211. Farwell, J., there points out that in these cases the eye alone is the judge of the identity of two things, and he goes on to quote Lord Westbury in *Holsworth v. McCrea*, L.R. 2 H.L. 380, as follows: "Whether, therefore, there be piracy or not is referred at once to an unerring judge—namely the eye—which takes the one figure and the other figure, and ascertains whether they are or are not the same." This is surely a somewhat flattering description of the human eye, judicial or otherwise, but as a witness cannot be asked whether the thing is calculated to deceive—for this is the question to be decided by the Court—and as it is difficult to prove that anybody has in fact been deceived, it follows that the effect on the Judge's eye must have a lot to do with the decision. Apart from "passing-off" cases it seems fitting that a judicial inspection should be strictly confined to the limits mentioned by Lord Alverstone, and it might be suggested that owing to the imperfections of human nature such inspections should not be readily undertaken. If, for instance, a Judge who has some special knowledge of an industry makes an inspection of the subject-matter of an action concerning it, there is the inevitable danger of his becoming an expert witness in the cause that he is called upon to decide, and a witness moreover who is sheltered from cross-examination.

G. O. S.

Legal Literature.

Supplement to Garrow's Law of Trusts and Trustees.

By JAS. M. E. GARROW.

(pp. lii; 52:; x; Butterworth & Co. (Aus.) Ltd.)

Professor Garrow, who for many years held the Chair of English and New Zealand Law at Victoria University College, is the author of several well-known and valuable text-books on different branches of New Zealand law. His works on *Property* and *Criminal Law* are in their second editions, and now to his *Law of Trusts and Trustees*, published in 1919, he has written this *Supplement*. The appearance of the *Supplement* is well-timed, for, so far as the New Zealand practitioner is concerned, there lies not a little difficulty, and indeed some danger, in the use of the latest editions of the English text-books on this subject, so radical and extensive have been the alterations made recently to the English law by legislation. Since 1919 there has not in New Zealand been much statutory alteration in this branch of the law, practically the only changes of general application being those contained in the Trustee Amendment Act, 1924, and the Religious, Charitable and Educational Trusts Amendment Act, 1928; there have, however, been certain not unimportant alterations in the law as regards estates in the hands of the Public Trustee. Many cases of importance have, however, been decided both in England and New Zealand touching the law of trusts during the last ten years, and these alone are sufficient to demand a *Supplement* to Professor Garrow's book. The *Supplement* follows the plan of the well-known *Supplement to Halsbury*, noting the main work page for page; decisions up to May of this year, and a few earlier decisions omitted from the main work, are included. A useful feature of the *Supplement* is its own index.

The main work is now obtainable bound together with the *Supplement*, and the latter is, of course, obtainable separately by those who already possess the main work.

Canterbury College Law Students' Society.

This Society has just completed another successful year.

The opening address was delivered by Mr. G. T. Weston, President of the Canterbury District Law Society, who chose for his subject "The Annual Legal Conference, 1930." Two Moots were held during the year and were presided over by Messrs. F. D. Sargent and W. J. Hunter, both of whom commented on the high standard set by the "learned counsel." Chambers Night proved a great success with Mr. J. D. Hutchison on "the Bench." About twelve members participated. The subjects argued were of considerable interest, and the practice provided and the advice given were very helpful to members. Lectures were delivered during the year by Mr. C. S. Thomas who spoke on "Things and Men, Criminal," and by Mr. A. T. Donnelly who addressed the Society on "English Legal History." A case for opinion, stated by Mr. A. C. Brassington, was included in the syllabus this year. This is an

entirely new venture, giving valuable practice in opinion writing.

A cup, to be known as the "D. F. Laurenson Memorial Cup" has been presented to the College by the Society for Inter-Faculty competition in tennis. It has been presented in memory of the late Mr. D. F. Laurenson, a former President of the Society and one of its keenest supporters.

The Annual Debate with the Dialectic Society once more resulted in a win for the Law Students. The subject was "That Counsel is Justified in Defending a Prisoner of whose Guilt he is Cognisant."

The Society's Annual Dinner was held at Dixieland, and a number of senior members of the profession were present. Mr. A. S. Taylor, Dean of the Faculty, presided. An informal fancy dress dance was held early in the year. The Annual Dance, held at the "Winter Garden," proved itself once again to be one of the best functions of the season.

Two members of the Society, Mr. R. J. S. Bean and Mr. J. E. Farrell, have been chosen as the Canterbury College nominees for the Rhodes Scholarship.

Bills Before Parliament.

Arms Amendment. (HON. MR. COBBE). Firearms, ammunition or explosives brought to New Zealand without permit may be seized and detained; S. 6 of principal Act amended.—Cl. 2. Restricting provisions of principal Act requiring issue of a permit for purchase of explosives; S. 7 (3) of principal Act amended; S. 6 of Amendment Act, 1921-22, repealed.—Cl. 3. Restricting provisions of principal Act requiring registration of shot guns; S. 9 of principal Act amended.—Cl. 4. S. 11 (4) of principal Act repealed.—Cl. 5. S. 12 of principal Act amended.—Cl. 7. Provisions as to seizure of firearms, etc., in possession of intoxicated or mentally defective person; S. 15 of principal Act amended.—Cl. 7. Extending power of Commissioner of Police to authorize seizure of explosives.—Cl. 8. Authorising disposal of firearms, etc., detained by police under authority of principal Act.—Cl. 9.

Canterbury Agricultural College. (HON. MR. MURDOCH). Consolidating and amending Acts relating to Canterbury Agricultural College.

Disabled Soldiers' Civil Re-establishment. (HON. MR. COBBE). Minister may, for purpose of assisting disabled soldiers to obtain suitable employment or to engage in suitable occupations (a) appoint local advisory committees in respect of specified districts or localities, (b) make arrangements with employers for employment of disabled soldiers, (c) establish and carry on schemes for vocational training of disabled soldiers, (d) make payments to disabled soldiers to supplement their earnings in any employment.—Cl. 3. Minister may delegate powers to Commissioner of Pensions.—Cl. 4. Employment and vocational officers may be appointed as officers of Public Service.—Cl. 5. Membership and functions of local advisory committees.—Cl. 6. S. 18 of Finance Act, 1919, to apply to purposes of this Act.—Cl. 7. Power to make regulations.—Cl. 8.

Finance (No. 2). (HON. MR. RANSOM). Empowering Minister of Finance to borrow £5,000,000 for certain public works.—Cl. 2. Empowering Minister of Finance to borrow £2,000,000 for electric-power works.—Cl. 3. Empowering Minister of Finance to borrow additional £1,000,000 for purposes of Railway Improvement Authorisation Act, 1914.—Cl. 4. Empowering Minister of Finance to borrow additional £1,000,000 for purposes of Forests Act, 1921-22.—Cl. 5. Additional authority for Minister of Finance to make advances to Public Trustee, Native Trustee, and Government Insurance Commissioner.—Cl. 6. Payments on behalf of other Governments; S. 137 of Public Revenues Act, 1926, repealed.—Cl. 7. S. 7 of Finance Act, 1929, repealed.—Cl. 8. S. 6 (3) of Finance Act, 1929, amended.—Cl. 9. Moneys borrowed under New Zealand State-guaranteed Advances Act, 1909, and amount of securities issued under Urewera Lands Act, 1921-22, to be subject to New Zealand Loans Act, 1908, and certain of the same to be part of the public debt.—Cl. 10. Extending purposes for which moneys borrowed under Education Purposes Loans Act, 1919, may be expended.—Cl. 11. Treasury may agree with bank for borrowing of drafts.—Cl. 12. Special provision with respect to public moneys received beyond New Zealand.—Cl. 13. Special provision with respect to payment to Consolidated Fund of interest on capital expenditure on railways.—Cl. 14. Minister of Railways authorised to pay license fees in respect of motor services.—Cl. 15. Abolition of Waihou and Ohinemuri Rivers Improvement Account as from 1st April, 1931.—Cl. 16. Kauri-gum Industry Account abolished as from 1st April, 1931.—Cl. 17. Abolition of National Endowment Account.—Cl. 18. Abolition of Cheviot Estate Account.—Cl. 19. Special provision with respect to cost of administration of Hutt Valley Lands Settlement Act, 1925.—Cl. 20. Fixing amount to be paid by Taieri River Trust in respect of works carried out by Minister of Public Works under section 17 of Appropriation Act, 1923.—Cl. 21. Validating payment of £5,200 by Waimarino Relief Association to the General Purposes Relief Account.—Cl. 22. Taxation in respect of certain race meetings may be remitted and amount thereof applied for relief of unemployment.—Cl. 23. Section 8 of Finance Act, 1925, amended. Consequential repeals.—Cl. 24. Special provision with respect to assessment of taxable income of renters of cinematograph films in certain cases.—Cl. 25. Fees for licenses under section 67 of Cemeteries Act, 1908.—Cl. 26. Provision for recess travelling-allowance for Speakers of the Legislative Council and the House of Representatives.—Cl. 27. Extending privileges of wives of South Island members of the General Assembly with respect to steamer tickets.—Cl. 28. Repealing section 31 of Finance Act, 1924 (relating to appointment of Commissioner for New Zealand in Canada and the United States)—Cl. 29. Amalgamation of Department of Industries and Commerce, Department of Tourist and Health Resorts, and Publicity Branch of Internal Affairs Department.—Cl. 30. Authorising payments to members of General Assembly in respect of their services as members of certain Commissions and Committees, &c.—Cl. 31. Section 30 of Public Works Act, 1928, amended.—Cl. 32. Extending powers of Minister in Charge of Tourist and Health Resorts.—Cl. 33. Constituting office of Under-Secretary of Defence. Powers and duties of Commandant of the Forces.—Cl. 34. Part II.—Pensions, Superannuation, and Relief Funds.—Abolishing time-limit with respect to attributability of death or disablement to war service.—Cl. 35. Extending benefits of Coal-miners Relief Fund to co-operative workers.—Cl. 26. Special provision as to computation of pensions in cases where applicant and wife or husband of applicant are in receipt of war pensions.—Cl. 37. Making further provision with respect to payments out of Coal-mining Accident Fund.—Cl. 38. Special provision with respect to retiring-allowances out of Public Service Superannuation Fund to certain members of Defence Forces and clerical officers of Defence Department.—Cl. 39. Special provision as to certain special cases.—Cls. 40, 41. Part III.—Swamp Drainage Amendment. S. 2 of Swamp Drainage Amendment Act, 1928, amended.—Cl. 43. Special provisions of local application.—Cls. 44, 45. Part IV.—Local Authorities and Public Bodies. Authorising harbour boards to make grants to certain unemployment funds.—Cl. 46. Contributions by local authorities to British Empire Cancer Campaign Society.—Cl. 47. Contributions by local authorities towards establishment of Chair of Obstetrics and Gynaecology.—Cl. 48. Provisions of local application—Cls. 49-53. Contributions by local authorities towards cost of subways, bridges, or railway-bridges may be paid by instalments.—Cl. 54. Part V.—Miscellaneous. Extending power of savings-banks to invest funds in war loans.—Cl. 55. Statements of accident insurance companies to be certified.—Cl. 56. Validating issue of certain totalizator licenses.—Cl. 57. Special provisions.—Cls.58-60. Restricting power of building societies to receive deposits or loans.—Cl. 61.

Imprest Supply (No. 4). (HON. MR. RANSOM). Imprest grants of £2,335,000 out of funds and accounts in First Schedule and of £303,500 out of accounts in Second Schedule.

Native Trustee. (HON. SIR APIRANA NGATA). A consolidating and amending measure.

Slaughtering and Inspection Amendment. (HON. MR. MURDOCH). No fees payable to abattoir authorities in respect of meat from stock slaughtered in meat-export slaughter-houses and sold for bacon, hams, tinning or export.—Cl. 2.

Tramways Amendment. (HON. MR. TAVENER). Applications for examination as motormen in respect of "one-man" cars.—Cl. 2.